

SENATE BILL REPORT

SHB 1329

As of April 1, 2009

Title: An act relating to improving quality, access, and stability of child care through providing collective bargaining for child care center directors and workers.

Brief Description: Providing collective bargaining for child care center directors and workers.

Sponsors: House Committee on Ways & Means (originally sponsored by Representatives Pettigrew, Conway, Kagi, Hunt, Seaquist, Sells, Priest, Kenney, Ormsby, Wood, Haigh, White, Chase, Herrera, Morrell, Lias, Green, Cody, Appleton, Hasegawa, Carlyle, Simpson, McCoy, Sullivan, Orwall, Goodman, Campbell, Hudgins, Moeller, Nelson and Santos).

Brief History: Passed House: 3/09/09, 65-31.

Committee Activity: Labor, Commerce & Consumer Protection: 3/26/09, 3/30/09 [DPA-WM, DNP].

Ways & Means:

SENATE COMMITTEE ON LABOR, COMMERCE & CONSUMER PROTECTION

Majority Report: Do pass as amended and be referred to Committee on Ways & Means. Signed by Senators Kohl-Welles, Chair; Keiser, Vice Chair; Franklin and Kline.

Minority Report: Do not pass. Signed by Senators Holmquist, Ranking Minority Member; Honeyford and King.

Staff: Kathleen Buchli (786-7488)

SENATE COMMITTEE ON WAYS & MEANS

Staff: Michael Bezanson (786-7449)

Background: Employees of cities, counties, and other political subdivisions of the state bargain their wages and working conditions under the Public Employees' Collective Bargaining Act (PECBA) administered by the Public Employment Relations Commission (PERC). Individual providers (home care workers), adult family home providers, and family child care providers also have collective bargaining rights under the PECBA.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

The employer and exclusive bargaining representative have a mutual obligation to negotiate in good faith over specified mandatory subjects of bargaining: grievance procedures and personnel matters, including wages, hours, and working conditions. To resolve impasses over contract negotiations, the PECBA requires binding arbitration if negotiations for a contract reach impasse and cannot be resolved through mediation.

Summary of Bill (Recommended Amendments): The PECBA is amended to apply to the Governor with respect to child care center directors and workers, and to govern collective bargaining between the Governor and the exclusive bargaining representatives of the directors and workers. Negotiated rule making and adjustments to certain subsidy rates are required.

Public Employees and Employer. Solely for purposes of collective bargaining, child care center directors and workers are "public employees." The directors and workers are employees who work on-site at licensed centers that have at least four children for whom they receive child care subsidies, as well as owners. Employees who work at certain centers are not covered for purposes of collective bargaining. These centers are ones that are operated directly by another unit of government or a tribe, or by an entity that operates ten or more child care centers statewide. These centers are also ones that are operated by a local nonprofit organization whose primary mission is to provide social services and that pays membership dues to either a national 501(c)(3) organization with more than \$3 million in membership dues annually or a regional council that is affiliated with a national 501(c)(3) organization with more than 200 affiliates.

Bargaining Units and Representatives. For purposes of collective bargaining, appropriate units must be determined by the PERC and must conform to the requested unit if consistent with the act. The PERC must include in the same unit child care center directors and workers employed at centers in existing Department of Social and Health Services (DSHS) regions, and may group together regions to minimize the number of units. Each year, child care centers must provide to the Department of Early Learning (DEL) a list of the names and addresses of current directors and workers. Upon request, the DEL must provide to a labor organization a list of all directors and workers in the unit that the organization seeks to organize and the labor organization may not release that information to any other party and may only use that information for collective bargaining. The exclusive representatives are determined in the manner specified in the PECBA, except that: if none of the choices receives a majority of the votes cast in the initial election, there is a run-off election; and to show at least 30 percent representation within a unit to accompany a request for an initial election, the written proof of representation is valid only if collected not more than two years prior to filing the request. Initial elections may not be conducted before July 1, 2010.

Collective Bargaining. The exclusive representatives must conduct negotiations jointly, and must bargain for one agreement covering all child care center directors and workers who are represented. The exclusive representatives and the Governor have a mutual obligation to negotiate in good faith over specified mandatory subjects of bargaining. Matters subject to bargaining must be within the purview of the state and within the community of interest of directors and workers. The Governor must bargain over the manner and rate of subsidy and reimbursement, so long as any agreement is consistent with the provisions of any quality rating and improvement system. The Governor is permitted to bargain over funding for

professional development and training, mechanisms and funding to improve access of child care centers to health care insurance and other benefit programs, other economic support for child care centers, and grievance procedures to resolve disputes arising out of the interpretation or application of the collective bargaining agreement. The Governor is prohibited from bargaining over retirement benefits.

Requests for Funds and Legislative Changes. The Governor must submit a request to the Legislature for any funds and legislative changes necessary to implement a collective bargaining agreement for child care center directors and workers. A request must not be submitted by the Governor to the Legislature unless it has been certified by the Director of the Office of Financial Management as being feasible financially or that it reflects the binding decision of an arbitration panel. A request may not be submitted before July 1, 2011.

The Legislature must approve or reject the submission of the request for funds as a whole. If the Legislature rejects or fails to act on the submission, a collective bargaining agreement will be reopened solely for the purpose of renegotiating the funds necessary to implement the agreement. If the Legislature approves the submission and a significant revenue shortfall occurs, as declared by a proclamation of the Governor or a resolution of the Legislature, the parties must immediately enter into collective bargaining for a mutually agreed upon modification of the agreement.

Mediation and Arbitration. Child care center directors and workers are subject to mediation and binding interest arbitration if an impasse occurs in negotiations. For all personnel who are subject to binding interest arbitration under the PECBA, an interest arbitration panel must consider the employer's authority, the parties' stipulations, and the cost-of-living. For directors and workers, the panel must also consider a comparison of subsidy rates and reimbursement programs by public entities along the west coast, and the financial ability of the state to pay for a collective bargaining agreement. The panel's decision is not binding on the Legislature, and if the Legislature does not approve the decision, it is not binding on the state.

Representation Fees. The state must deduct representation fees from monthly amounts of child care subsidies due to child care centers and transmit the fees to the exclusive representatives. Any agreement to pay a representation fee must safeguard the child care center owner's and operator's rights of nonassociation based on bona fide religious tenets or teachings. The child care center owner or operator must pay an amount equivalent to the representation fee to a nonreligious charity or to another charitable organization.

Negotiated Rule Making. Before adopting requirements that affect child care center directors and workers, the Director of the DEL must engage in negotiated rule making under the Administrative Procedures Act with exclusive representatives of directors and workers and with other affected interests.

Parity. The DSHS must adjust subsidy and reimbursement rates paid to child care centers in particular regions to reflect rate provisions in collective bargaining agreements for directors and workers employed at child care centers in those regions.

Other Provisions. The following are not modified:

- the rights of parents and legal guardians to choose and terminate the services of child care centers;
- the rights of child care centers to choose, direct, and terminate the services of child care workers, and unless otherwise provided, to manage and operate facilities and programs;
- the rights of employers and employees under the National Labor Relations Act;
- the right of the Legislature to modify the delivery of state services through child care subsidy programs, including the standards for eligibility of child care centers participating in subsidy programs; and
- the right of the Legislature to determine standards for professional development and training, quality criteria, ratings, and incentives for improving quality.

EFFECT OF CHANGES MADE BY LABOR, COMMERCE & CONSUMER PROTECTION COMMITTEE (Recommended Amendments): References to DSHS are changed to DEL. The definition of child care center directors and workers is modified to include all owners. The definition of child care center is modified to apply to those centers that have at least four children for whom they receive a subsidy. The Governor and the exclusive bargaining representative must agree to a mechanism for collecting a representation fee. Any agreement to pay a representation fee must safeguard the child care center owner's and operator's rights of nonassociation based on bona fide religious tenets or teachings. A labor organization receiving the personal information of child care center directors and workers may only use that information for collective bargaining purposes. An initial election to determine the exclusive bargaining representative may not occur before July 1, 2010, and the initial request for funds necessary to implement the collective bargaining agreement may not be submitted to the Office of Financial Management before July 1, 2011.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony (Labor, Commerce & Consumer Protection):
 PRO: There is one reason for this bill and that is to provide children access to child care throughout the state. Many child care centers rely on the subsidy payment provided by the state. The challenge these centers meet has been the difference between the costs of providing child care and the actual subsidy provided by the state. This difference makes it difficult for child care centers to make ends meet. This legislation allows these centers to set a course to close the gap between the costs of providing the care and the support provided by the state for that care.

Stability and consistency must be provided and without this legislation, that will be difficult.

This is a product of much work between the Governor's Office and the affected stakeholders. Kids and their care should come first. Child care is not a place to warehouse kids, but is a

portal to a life-long learning experience. This is about the providers having better capabilities to take care of the neediest kids in their school. This provides them a voice they do not have, allows them to bargain with the state, and addresses issues such as the subsidy rate and educational opportunities.

Parity for the exempt organizations is in the bill which also exempts the very small organizations who have three or fewer children. The bill further clarifies a commitment to quality education and the quality rating improvement system. This is for elections only during this biennium and has a huge impact on the fiscal note. The workers can decide now and come back for the bargaining process in a more stable economic environment. Currently, child care providers do not have a voice over their services and they are not treated as professionals, they should have a voice in the decisions being made about their professions.

CON: We do not want employee's private information released pursuant to the bill. This does not affect wages. No research says that this will improve quality. The career and wage ladder is a better model. We have not been contacted for our input on this legislation and our voice has been left unheard. There are questions about the vote to choose a bargaining representative and we have been told that we will not have an opportunity to sign an election card. Unionization would result in lower subsidies and would just take more money away from our centers. If there is extra money, let the centers use it and pay more to their employees. There are concerns that this will cause centers to turn subsidized children away.

This bill is a bad lesson plan and is set up to fail. This will not benefit preschool teachers who do not do their jobs for the money but do it because they love what they do. Children will lose if centers stop taking subsidized children. We are concerned that we will be liable for giving the private information of our employees as required by the bill. There are many groups that are exempt from the bill – why is it acceptable that the large businesses are out and the small centers are left in? We support a fair subsidy and quality to child care, but the union voice is the voice of the provider and there are many questionable providers. The union will support the provider and not the child. The protections for bona fide religious tenets would not protect 501(c)(3) organizations which should have an exemption. There is no evidence that family child care centers have improved after being awarded similar rights.

OTHER: There is one aspect of the bill that has to do with the certification of financial feasibility. We are asking that the director of financial management be able to make the decision whether the agreement is feasible. The amendatory language clarifies that the Governor's Office will be able to react to changing economic conditions whether it is a bargained agreement or an arbitrated agreement or both.

Persons Testifying (Labor, Commerce & Consumer Protection): PRO: Representative Pettigrew, prime sponsor; Senator Marr; Adair Damman, James Watson, Service Employees International Union #925; Lucinda Young, Washington Education Association; Don Haynes, Pike Market Child Care and Pre School.

CON: Margo Logan, Child Care Consulting; Debbie Arnold, Colleen Hill, Country Kids Playhouse; Lynnda Langston, Kids Country; Susan Rowbauer, Millennium; Stu Jacobson, Washington Parents; Judy Jennings, Washington Federation of Independent Schools.

OTHER: Victor Moore, Office of Financial Management.